

RECEIVED

MAY 16 2017

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

63-34403
RECEIVED

MAY 17 2017

WATER RESOURCES
WESTERN REGION

1. Name of applicant(s) Cat Creek Energy, LLC Phone 406-459-3013
 Name connector (check one): ☐ and ☐ or ☐ and/or
 Mailing address 398 S. 9th, Suite 240 City Boise
 State ID Zip 83702 Email jcarkulis@exergydevelopment.com
2. Source of water supply South Fork Boise River which is a tributary of Boise River
3. Location of point(s) of diversion:

TWP	RGE	SEC	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
1N	9E	26			SW	NW	Elmore	South Fork Boise River	
					SE	NW	"	"	
					SW	NE	"	"	

4. Water will be used for the following purposes:
- Amount 9,996 cfs for Diversion to Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 101,352 af for Power Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 100,000 for Power from Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount ~~9,996 cfs~~ for ~~Flood Protection~~ purposes from ~~1/1~~ to ~~12/31~~ (both dates inclusive)
 (cfs or acre-feet per year)
5. Total quantity to be appropriated is (a) 9,996 cubic feet per second (cfs) and/or (b) 101,352 acre feet per year (af).
6. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source. Pump in Anderson Ranch Reservoir, penstock to Upper Reservoir
- b. Height of storage dam 100 feet; active reservoir capacity 100,000 acre-feet; total reservoir capacity 100,000 acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11. For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☒ Yes ☐ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
- e. If well is already drilled, when? _____; drilling firm _____;
 well was drilled for (well owner) _____; Drilling Permit No. _____
7. Description of proposed uses (if irrigation only, go to item 8):
- a. Hydropower; show total feet of head and proposed capacity in kW. 600 MW
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; complete and attach the Municipal Water Right Application Checklist.
- d. Domestic; show number of households _____
- e. Other; describe fully. Flood protection coordinated with BoR and USACE.
C-B as attorney for Cat Creek Energy, LLC

8. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1N	9E	26			P				P	P			PS						
1N	9E	35	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	
		36		PS	PS		PS	PS	PS	PS	PS	PS	PS	PS		PS			
1S	9E	02	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		PS	PS		
		01					PS	PS	PS										

Total number of acres to be irrigated: 0 ¹¹ ^{PS} ^{PS} ^{PS} ^{PS}

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping?

None

10. a. Who owns the property at the point of diversion? U.S. Government
- b. Who owns the land to be irrigated or place of use? Applicant has a lease with property owner Wood Creek Ranch LLC
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. Submitted via email.

See attached. Note: This application is subordinate to first and second fill of existing reservoirs in the Boise River Basin.

Consultant Contact: Idaho Water Engineering LLC Dave Tuthill
2918 N E1 Rancho Pl. 208-870-0345
Boise ID 83704 dave@idahowaterengineering.com

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

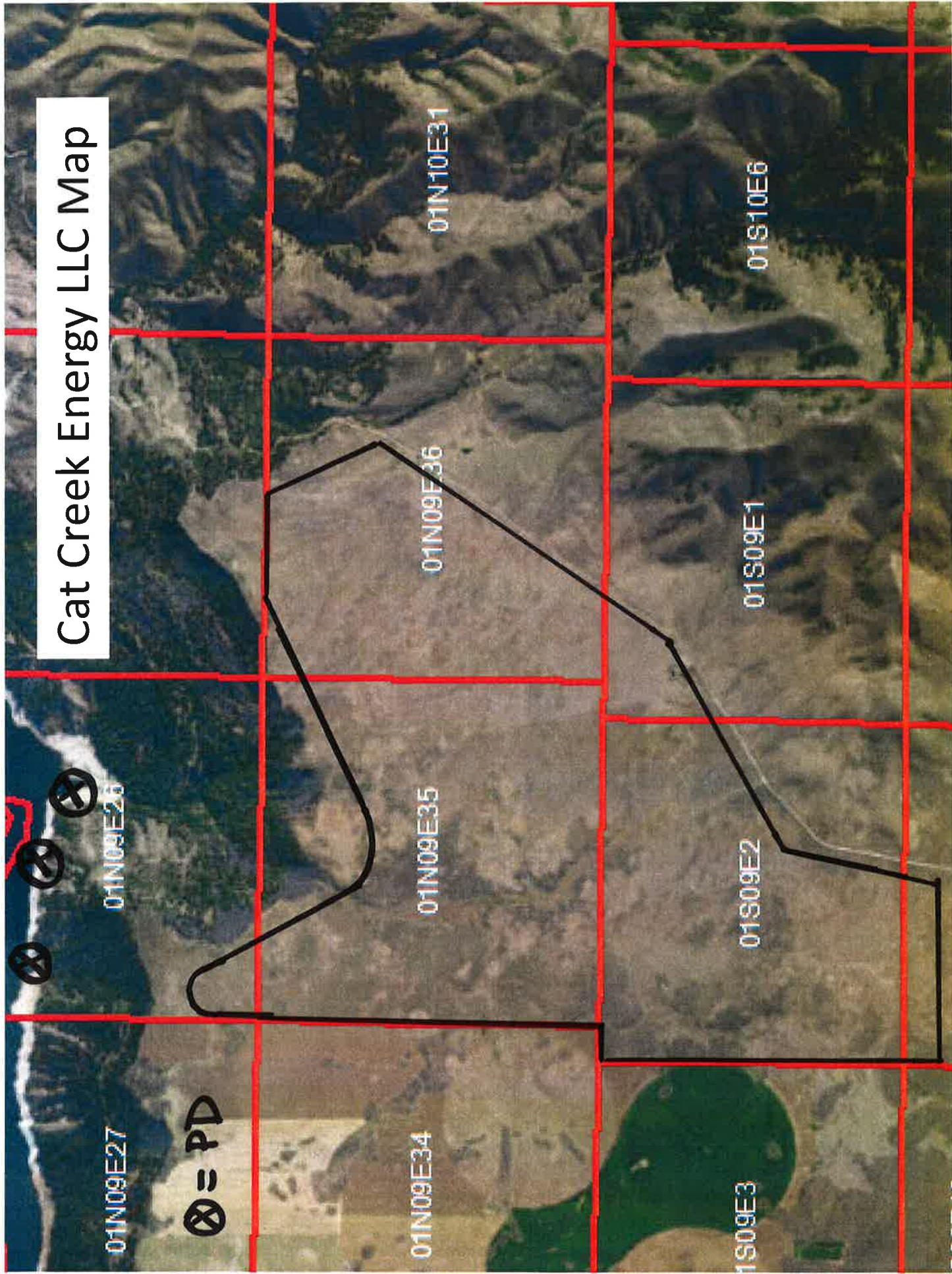
John Faulkner
 Signature of Applicant
Cat Creek Energy LLC
John Faulkner Manager
 Print Name (and title, if applicable)

 Signature of Applicant

 Print Name (and title, if applicable)

For Department Use:
 Received by VC Date 5/16/17 Time 2:56 Preliminary check by AG
 Fee \$ 25,160.200 Received by VC Receipt No. C1035100 Date 5/16/17
 \$ 25602

Cat Creek Energy LLC Map



FILED EFFECTIVE



CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY

(Instructions on back of application)

2013 MAY 14 AM 8:51

SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited liability company is:

CAT CREEK ENERGY, LLC

2. The complete street and mailing addresses of the initial designated office:

1989 South 1875 East, Gooding, Idaho, 83330

(Street Address)

(Mailing Address, if different than street address)

3. The name and complete street address of the registered agent:

John Faulkner

(Name)

1989 South 1875 East, Gooding, ID 83330

(Street Address)

4. The name and address of at least one member or manager of the limited liability company:

NameAddress

John Faulkner

1989 South 1875 East, Gooding, ID 83330

5. Mailing address for future correspondence (annual report notices):

1989 South 1875 East, Gooding, ID 83330

6. Future effective date of filing (optional):

Signature of a manager, member or authorized person.

Signature

Typed Name: JOHN FAULKNER

Signature

Typed Name:

 IDAHO SECRETARY OF STATE
 05/14/2013 05:00
 CK: 134888 CT: 62575 BH: 1373700
 1 @ 100.00 = 100.00 ORGAN LLC # 2

 IDAHO SECRETARY OF STATE
 05/14/2013 05:00
 CK: 63175 CT: 89379 BH: 1373703
 1 @ 20.00 = 20.00 EXPEDITE C # 2

63-34403

W125202

SEEPAGE CALCULATIONS

This spreadsheet has been designed by Idaho Department of Water Resources to estimate the total annual seepage losses from a pond.

FILE NUMBER	Cat Creek Energy
REVIEWER	
DATE	

User Input
Calculated value
Formula Explanations

INPUTS

SQ. FT. Calculator Pond Surface area in acres
1573

POND SURFACE AREA (SQ. FT.)	68519680
-----------------------------	----------

SUGGESTED SEEPAGE RATE (FT/DAY)	0.0000
---------------------------------	--------

Use the table below to find the "SUGGESTED SEEPAGE RATES".

FORMULA: (Surface Area X Seepage Rate) / 7.48 = Gallons Per Day loss

CONVERT TO GPD	0	GPD
----------------	---	-----

TOTAL SEEPAGE LOSS (AFA)	0.0	AFA
--------------------------	-----	-----

SUGGESTED SEEPAGE RATES FOR DIFFERENT SOIL TYPES:
GW, GP, GM, GC, SW, SP and SM (silty sand, sand silt mixtures and gravel mixtures) = 0.20 ft per day
OL and ML (inorganic silts - very fine sands, silty, or clayey fine sands) = 0.016 ft per day
SC (clayey sands, sand clay mixtures) = 0.007 ft per day
CL (Low to medium plasticity clays) = 0.003 ft per day
MH, OH, PT and CH (high plasticity clays) = 0.0003 ft per day
LINED PONDS (liners can be chemical, fabric, or bentonite) = 0 ft per day
Ponds Intercepting Groundwater (excavated ponds filled with shallow Ground Water) = 0 ft per day

PLEASE NOTE: The initial basis for the Suggested Seepage Rates in the table above is found on Page 16 of Seepage from Fish Ponds, Bulletin 599, August 1989 Alabama Agricultural experiment Station, Auburn University, Auburn University Alabama. If you don't know the soil type, please refer to the map provided at <X:\Spatial\Soils\USCS\PondSoils.lyr>. Use "0" if the ponds intersect the water table.

Evaporation Loss Calculation

FILE NUMBER	Cat Creek Energy
REVIEWER	
DATE	

This spreadsheet has been designed by Idaho Department of Water Resources to estimate the annual evaporation losses from a pond.

The acronyms used on the Kimberly Research Center website are defined below:
P = Precipitation
ET= Evapotranspiration
P _d = Precipitation deficit
P _d =ET-P

User Input
Calculated value
Formula Explanations

USING THIS SPREADSHEET

To ascertain the evaporation from a pond, you will need to go to the Kimberly Research Center website. The link is found below. This web site provides the Precipitation Deficit for the area where the pond is located. The Precipitation Deficit is the total amount of free pan evaporation minus the precipitation for a given area, which gives the total amount of evaporative losses incurred by the pond. There are several weather sites that are used, and the entire state is pretty much covered. IDWR staff can find the nearest site using Arc Map. The shape file containing the sites can be found at X:/Spatial/Climate/ETIdahostations.shp.

Found at: <http://www.kimberly.uidaho.edu/ETIdaho/online.php>

Precipitation Deficit

Station: Fairfield

Month	mm/day ¹	Days per month	mm/Month
Jan	0.00	31	0.00
Feb	0.00	28	0.00
March	0.00	31	0.00
April	0.46	30	13.80
May	0.96	31	29.76
June	1.21	30	36.30
July	1.78	31	55.18
August	1.69	31	52.39
September	1.23	30	36.90
October	1.22	31	37.82
November	0.00	30	0.00
December	0.00	31	0.00

PLEASE NOTE: We cannot use the season average, because there are several areas in Northern Idaho with a negative Precipitation Deficit. Therefore, we must enter each monthly deficit, and enter in a zero (0) for each negative month. The reason for this is that precipitation can only offset evaporation to the extent of the evaporation.

Please enter the daily average Precipitation Deficit as shown in the example below.

Although it has sometimes been useful to consider wintertime evaporation to be zero, Allen and Robison (2007, p. 169) noted, "Evaporation during nongrowing (wintertime) periods varies widely . . ."

¹Negative monthly mean values should be entered in the above table as "0".

Total mm/year = 262.15

$[(\text{mm/yr}) \div (\text{convert to feet})] \times (\text{Surface area of pond, in acres}) = \text{Evaporation Loss in Acre Feet}$

(262.15) ÷ 304.8) X 1573.00 = 1352.9 AFA

Surface Area of Pond is automatically Carried over from the Seepage Loss Sheet.

TOTAL STORAGE

FILE NUMBER	Cot Creek Energy
REVIEWER	
DATE	

This spreadsheet has been designed by Idaho Department of Water Resources to estimate the total seepage, evaporation and fill capacity required for a pond

Surface Area (in Acres)	1573	"Surface Area" is automatically carried over from the "Seepage Loss Sheet"
Average Pond Depth (in feet)	63.5727908	"Average Pond Depth" depicts the actual depth of the pond either measured or estimated. Note: If you know the maximum depth and not the average depth, the field examiner's handbook suggests multiplying the maximum depth by 0.4 to get the average depth, or you can use any method that you know the capacity, divide the capacity by surface area and enter the average pond depth in the space above.
Pond Capacity (in acre feet)	99999.9999	

Volume Needed Above Initial Fill to Fulfill From Storage Needs- "Multiple Fills" (in acre feet)	0	The "Volume Needed Above Initial Fill" is the acre-feet of water required to meet <i>from storage</i> component if the <i>from storage</i> component exceeds a one time fill. This section should not include the amount of water needed to fill the pond initially or the amount of water needed to maintain the pond level due to evaporation or seepage. For example: if a pond has a capacity of 5 acre feet and 2.5 acre feet of seepage and evaporation, but the pond is used for irrigation that requires 10 acre feet of from storage for the irrigation use, then you would insert 5 acre feet into this location (10 acre feet needed - 5 acre feet from the initial fill = 5 acre feet of additional storage needed). PLEASE NOTE: You must have a "From Storage" component exceeding the Initial fill on the permit to include a volume in this space.
Estimated Seepage Loss (in acre feet)	0.0	The "Estimated Seepage Loss" is automatically carried over from the Seepage Loss Sheet
Estimated Evaporation Loss (in acre feet)	1352.9	The "Estimated Evaporation Loss" is automatically carried over from the Evaporation Loss Sheet
Total Volume Required (in acre feet)	101352.9	"The Total Volume Required" is calculated by adding the Pond Capacity, Multiple Fills, Seepage Loss, and Evaporation Loss amounts to determine the total amount of storage required.

Flow Rate Into Pond (in cfs)	10000.00	The "Flow Rate" Into the Pond depicts the actual flow either measured or estimated into the pond
Highest Daily Evaporation Rate From Evaporation Tab. (in mm/day)	1.78	This number is automatically selected by picking the highest recorded number in the "Precipitation Deficit Table".
Maximum Required Daily Maintenance Volume (in acre feet per day)	9.15	"Maximum Required Daily Maintenance Volume" is the maximum volume of water needed on any given day during the year, and is calculated by adding the highest daily evaporation loss to the average daily seepage loss in acre feet. The average daily seepage loss is calculated by dividing the "Estimated Seepage Loss" by 365 days. This is acceptable, since the seepage rate shouldn't vary throughout the season unless the pond completely freezes over during the winter months. The highest daily evaporation loss is calculated by dividing the Highest Daily Evaporation Rate by the 304.8 conversion factor and multiplying this number by the pond surface area to attain a combined daily acre feet requirement.
Minimum Maintenance Flow (in cfs)	4.63	The "Minimum Maintenance Flow" is the minimum amount of flow required to maintain the level of the pond. This number is determine by dividing the "Maximum Required Daily Maintenance Volume" by 1.9835. This flow can be used to determine if the flow rate into the pond is adequate to maintain the pond level.
Days Required to Fill the Pond	5	The "Days Required to Fill the Pond" is calculated by dividing the "Pond Capacity" by the "Flow Rate" minus "Minimum Maintenance Flow" multiplied by 1.9835. This section will assist you in determining if the flow rate being diverted to the pond is adequate to fill the pond while maintaining the pond level. The length of time to fill the pond will help determine if the flow rate is adequate for the size of pond being proposed. This number should be between 1 and 365 days for a project to be successful.
Days Required to Fill the Pond at 13,000 gallons per day		The "Days Required to Fill the Pond at 13,000 gallons per day" is calculated converting the "Pond Capacity" and the "Maximum Daily Maintenance Volume" to gallons. The "Pond Capacity" is then divided by 13,000 gallons minus the "Maximum Daily Maintenance Volume" in gallons to determine the number of days to fill pond. This number should be between 1 and 365 if this pond is to described as a domestic use.

User Input
Calculated value
Formula Explanations

63-34403

No. W 125202	Due no later than May 31, 2017 Annual Report Form	2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		JOHN FAULKNER 1989 S 1875 E GOODING ID 83330	
1. Mailing Address: Correct in this box if needed. CAT CREEK ENERGY, LLC JOHN L FAULKNER 1989 S 1875 E GOODING ID 83330		3. <u>New</u> Registered Agent Signature:*	
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.			
Office Held	Name	Street or PO Address	City State Country Postal Code
MANAGER	JOHN L FAULKNER	1851 US HWY 26	GOODING ID USA 83330
5. Organized Under the Laws of: ID W 125202	6. Annual Report must be signed.* Signature: JOHN L. FAULKNER Date: 03/23/2017 Name (type or print): JOHN L. FAULKNER Title: MANAGER		
Processed 03/23/2017		* Electronically provided signatures are accepted as original signatures.	

63-34403



Cat Creek Energy: Evolution or Revolution

Cat Creek Energy & Water Storage Renewable Power Station

Generation Trybrid

750 MW Nameplate Capacity

600 MW Pump Storage Hydro

110 MW Wind Power

40 MW PV Solar

Ultimate Battery

54,400 MWhrs of Energy Storage

Grid Support

370 MW of Ancillary Services capability

Interconnection

230 kV Idaho Power grid

500 kV PacifiCorp grid

Beneficial Water Storage

100,000 acre-ft Reservoir

Land Ownership

Fee Simple **Private**

Scheduled COD

Calendar Year **2020**

Cat Creek Energy , LLC

398 S. 9th Street
Suite 240
Boise, Idaho 83702

Phone: 208.336.1370
Fax: 208.954.5099
E-mail: info@ccewsrps.net

The Cat Creek Energy & Water Storage Renewable Power Station represents the next revolution in transforming America's electrical energy resource base. High on the bluff 840 feet above the Anderson Ranch Reservoir in southern Idaho, the CCE facility integrates renewable energy components to create a more efficient, dependable, and robust form of firm, baseload electricity all the while providing the full range of the ancillary services to support increasingly arduous security and reliability transmission grid regulations. Moreover, the Cat Creek facility provides crucial water storage capacity for the Boise River Basin, whose current storage capacity for agricultural, municipal, environmental, and recreational demands is already stressed.

Cat Creek disrupts all the entrenched beliefs about renewables and hydro in the energy sphere. No longer are intermittent resources undependable. No longer do intermittent renewable resources need load following by fossil fuel generators. No longer does hydro rely on cycling water only once through its turbines. No longer does new hydropower conjure up the notion of an environmental calamity.

Cat Creek takes 38 balancing authorities in the West and synthesizes their operations through regulation and energy time shift management into one seamless grid operation.

Its as simple as flipping a switch.



Location of Upper Reservoir



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BLUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 30, 2018

CAT CREEK ENERGY LLC
398 S 9TH ST STE 240
BOISE, ID 83701

Application for Permit No. 63-34403

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A **Statewide** legal notice of the application has been prepared and is scheduled for publication in the MOUNTAIN HOME NEWS on 9/5/2018 and 9/12/2018 and the IDAHO STATESMAN, POST REGISTER, LEWISTON MORN TRIBUNE, and TIMES NEWS on 9/6/2018 and 9/13/2018. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Rachel Neely
Administrative Assistant

CC:

IDAHO WATER ENGINEERING
ATTN DAVID R TUTHILL JR
2918 N EL RANCHO PL
BOISE, ID 83704

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 10:36 AM
To: Swenson, Stacy
Subject: Elmore Legal Ads
Attachments: Elmore Cover Letter.docx; Elmore Legal Ad.docx

Good Morning Legal Clerk,

Please see the attached ads for publication on 9/5/2018 & 9/12/2018.

Please confirm these are okay to publish as shown.

Thank you,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

August 30, 2018

LEGAL NOTICE DEPARTMENT
MOUNTAIN HOME NEWS
PO BOX 1330
MOUNTAIN HOME, ID 83647-1330

RE: Application for Permit No. 63-34403
Application for Transfer No. 82169

Dear Legal Notice Department:

Please publish the enclosed legal notices on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notices on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 9/24/2018. Your cooperation is appreciated.

Sincerely,

Rachel Neely
Administrative Assistant

Enclosure(s)

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34403

CAT CREEK ENERGY LLC

398 S 9TH ST STE 240

BOISE, ID 83701

Points of Diversion L5(SENW) L6(SWNE) SWNW S26 T01N R09E ELMORE County Source SOUTH FORK BOISE RIVER Tributary
BOISE RIVER

Use: DIVERSION TO STORAGE 01/01 to 12/31 9,996 CFS

Use: POWER FROM STORAGE 01/01 to 12/31 100,000 AF

Use: POWER STORAGE 01/01 to 12/31 101,352 AF

Total Diversion: 9,996 CFS, 101,352 AF

Date Filed: 5/16/2017

Place of Use: POWER STORAGE

T01N R09E S26 SWSW

T01N R09E S35 NE(ALL) NW(ALL) SW(ALL) SE(ALL)

T01N R09E S36 NWNE SWNE NW(ALL) SW(ALL) NWSE

T01S R09E S1 L3(NENW) L4(NWNW) SWNW

T01S R09E S2 L1(NENE) L2(NWNE) SWNE SENE L3(NENW) L4(NWNW) SWNW SENW SW(ALL) NWSE SWSE

T01S R09E S11 NWNE NENW NWNW

Place of Use: POWER FROM STORAGE

T01N R09E S26 SWNE SWNW SENW

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

TRANSFER NO. 82169

FRANK TIEGS LLC, PO BOX 3110, PASCO, WA 99302; has filed Application No. 82169 for changes to the following water rights within ELMORE County(s): Right No(s). 61-12329, 61-12330. The transfer proposes to change the place of use and points of diversion for portions of water rights no. 61-7375 and 61-7449. The proposed new place of use site is about 12 miles southwest of Mountain Home, near the intersection of State Highway 167 and Liberator St.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at 208-334-2190; or for a full description of the right(s) or proposed transfer (s) please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code §§ 42-203A and 42-222. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before 9/24/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 9/5/2018 and 9/12/2018

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 9:31 AM
To: 'BOI Legals'
Subject: Ada Legal Ads
Attachments: Ada Cover Letter.docx; Ada Legal Ad.docx

Good Morning Legal Clerks,

Please see the attached ads for publication on 9/6/2018 & 9/13/2018.

Please confirm these are okay to publish as shown.

Thank you,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

August 30, 2018

LEGAL NOTICE DEPARTMENT
IDAHO STATESMAN
PO BOX 40
BOISE, ID 83707

RE: Application for Permit No.63-34403
Application for Permit No.63-34562

Dear Legal Notice Department:

Please publish the enclosed legal notices on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notices on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 9/24/2018. Your cooperation is appreciated.

Sincerely,

Rachel Neely
Administrative Assistant

Enclosure(s)

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34403

CAT CREEK ENERGY LLC

398 S 9TH ST STE 240

BOISE, ID 83701

Points of Diversion L5(SENW) L6(SWNE) SWNW S26 T01N R09E ELMORE County Source SOUTH FORK BOISE RIVER Tributary BOISE RIVER

Use: DIVERSION TO STORAGE 01/01 to 12/31 9,996 CFS

Use: POWER FROM STORAGE 01/01 to 12/31 100,000 AF

Use: POWER STORAGE 01/01 to 12/31 101,352 AF

Total Diversion: 9,996 CFS, 101,352 AF

Date Filed: 5/16/2017

Place of Use: POWER STORAGE

T01N R09E S26 SWSW

T01N R09E S35 NE(ALL) NW(ALL) SW(ALL) SE(ALL)

T01N R09E S36 NWNE SWNE NW(ALL) SW(ALL) NWSE

T01S R09E S1 L3(NENW) L4(NWNW) SWNW

T01S R09E S2 L1(NENE) L2(NWNE) SWNE SENE L3(NENW) L4(NWNW) SWNW SENW SW(ALL) NWSE SWSE

T01S R09E S11 NWNE NENW NWNW

Place of Use: POWER FROM STORAGE

T01N R09E S26 SWNE SWNW SENW

63-34562

MADERA DEVELOPMENT INC

5655 W FLOATING FEATHER RD

EAGLE, ID 83616

Point of Diversion SESW S2 T04N R01W ADA County Source GROUND WATER

Use: IRRIGATION 03/01 to 11/15 0.16 CFS

Total Diversion: 0.16 CFS

Date Filed: 6/27/2018

Place of Use: IRRIGATION

T04N R01W S2 SESW

Total Acres: 10

Water bearing zone to be appropriated is from 234 to 395 feet.

The proposed rate is higher than the statutory standard, 0.02 cfs per acre, and stated necessary to meet peak-hour demand for a proposed residential pressurized irrigation system.

Applicant proposes irrigation of 6.0 acres within a 10.0 acre permissible place of use.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 9/24/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 9/6/2018 and 9/13/2018

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 9:28 AM
To: 'legalnotices@postregister.com'; 'LEGALS@LMTRIBUNE.COM'; 'TWF Legals'
Subject: Bonneville Legal Ad - Nez Perce Legal Ad - Twin Falls Legal Ad
Attachments: Statewide Cover Letter.docx; Statewide Legal Ad.docx

Good Morning Legal Clerks,

Please see the attached ad for publication on 9/6/2018 & 9/13/2018.

Please confirm these are okay to publish as shown.

Thank you,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

August 30, 2018

POST REGISTER
PO BOX 1800
IDAHO FALLS, ID 83402

LEWISTON TRIBUNE
505 C ST PO BOX 957
LEWISTON, ID 83501

TIMES NEWS
PO BOX 548
TWIN FALLS, ID 83303-0548

RE: Application for Permit No. 63-34403

Dear Legal Notice Departments:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 9/24/2018. Your cooperation is appreciated.

Sincerely,

Rachel Neely
Administrative Assistant

Enclosures

The following application has been filed to appropriate the public waters of the State of Idaho:

63-34403

CAT CREEK ENERGY LLC

398 S 9TH ST STE 240

BOISE, ID 83701

Points of Diversion L5(SENW) L6(SWNE) SWNW S26 T01N R09E ELMORE County Source SOUTH FORK BOISE RIVER Tributary
BOISE RIVER

Use: DIVERSION TO STORAGE 01/01 to 12/31 9,996 CFS

Use: POWER FROM STORAGE 01/01 to 12/31 100,000 AF

Use: POWER STORAGE 01/01 to 12/31 101,352 AF

Total Diversion: 9,996 CFS, 101,352 AF

Date Filed: 5/16/2017

Place of Use: POWER STORAGE

T01N R09E S26 SWSW

T01N R09E S35 NE(ALL) NW(ALL) SW(ALL) SE(ALL)

T01N R09E S36 NWNE SWNE NW(ALL) SW(ALL) NWSE

T01S R09E S1 L3(NENW) L4(NWNW) SWNW

T01S R09E S2 L1(NENE) L2(NWNE) SWNE SENE L3(NENW) L4(NWNW) SWNW SENW SW(ALL) NWSE SWSE

T01S R09E S11 NWNE NENW NWNW

Place of Use: POWER FROM STORAGE

T01N R09E S26 SWNE SWNW SENW

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 9/24/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 9/6/2018 and 9/13/2018

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 5:01 PM
To: 'Rex Barrie'
Subject: Application for Permit 63-34403
Attachments: Watermaster Recommendation Form_F.PDF; Application for Permit 63-34403.pdf

August 30, 2018

REX BARRIE
WATER DISTRICT #63
PO BOX 767
10769 W STATE ST
STAR ID 83669-0767

RE: Application for Permit 63-34403

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. A copy of the application is enclosed with this email for your reference. Please review the application, complete a recommendation form, and submit your reply, if any, to this office by **September 24, 2018**.

IDWR will assume you do not object to this application if a timely response is not received. Please contact me if you have any questions in this matter. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 5:01 PM
To: 'Bosworth, Bill'
Subject: Applications for Permit 65-23768, 2-10558, 2-10565 & 63-34403
Attachments: IDFG Recommendation Form.docx; Application for Permit 65-23768.pdf; Application for Permit 2-10558.pdf; Application for Permit 2-10565.pdf; Application for Permit 63-34403.pdf

August 30, 2018

STATE OF IDAHO
DEPT OF FISH & GAME
ATTN: BILL BOSWORTH
3101 S POWERLINE RD
NAMPA, ID 83686

RE: Applications for Permit 65-23768, 2-10558, 2-10565 & 63-34403

Dear Mr. Bosworth:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **September 24, 2018**.

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 5:01 PM
To: Boe, Erik
Subject: Application for Permit 63-34403
Attachments: Agency Recommendation Form.docx; Application for Permit 63-34403.pdf

August 30, 2018

IDAHO DEPARTMENT OF WATER RESOURCES
DAM SAFETY
ATTN: ERIK BOE
WESTERN REGION
2735 W AIRPORT WY
BOISE ID 83705

RE: Application for Permit 63-34403

Dear Mr. Boe:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **September 24, 2018**.

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 30, 2018 5:01 PM
To: Clark, Cynthia Bridge; Skoro, Emily
Subject: Application for Permit 63-34403
Attachments: Agency Recommendation Form.docx; Application for Permit 63-34403.pdf

August 30, 2018

IDAHO DEPARTMENT OF WATER RESOURCES
WATER PROJECTS SECTION MANAGER
ATTN: CYNTHIA (BRIDGE) CLARK & EMILY SKORO
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098

RE: Application for Permit 63-34403

Dear Ms. Clark:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **September 24, 2018**

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

CARY SPACKMAN
Director

August 30, 2018

SEE ATTACHED DISTRIBUTION LIST

Re: Application for Permit No. 63-34403

Dear Interested Party:

The above referenced application may be of interest to you. I would like to inform you that the application has been submitted to the *Mountain Home News*, *Idaho Statesman*, *Post Register*, *Lewiston Morn Tribune*, and *Times News* for **Statewide** advertising. I have enclosed a copy of the application for your convenience. This information is also available on our website www.idwr.idaho.gov.

If you desire to file a formal protest against approval of the application, a written protest along with the \$25.00 protest fee must be received in this office by **September 24, 2018**. A copy of the protest must also be sent to the applicant.

If you have any questions regarding the application, please contact this office at 208-334-2190.

Sincerely,

Rachel Neely
Administrative Assistant
Western Regional Office

Enclosures

DISTRIBUTION LIST

SCOTT L CAMPBELL
CAMPBELL LAW CHTD
PO BOX 170538
BOISE ID 83717
scott@slclexh20.com

For: ELMORE COUNTY BOARD OF COMMISSIONERS
ELMORE COUNTY COURTHOUSE
150 S 4TH E STE 3
MOUNTAIN HOME ID 83647

MATTHEW J MCGEE
SPINK BUTLER LLP
251 E FRONT ST STE 200
PO BOX 639
BOISE ID 83701
mmcgee@spinkbutler.com

For: Elmore Co. Board of Commissioners

SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN
300 E MALLARD DR STE 350
BOISE ID 83706
tscanlan@spfwater.com

For: Elmore Co. Board of Commissioners

CITY OF BOISE
C/O ABIGAIL GERMAINE
PO BOX 500
BOISE ID 83701-0500
agermaine@cityofboise.org

IDAHO POWER CO
JOHN K SIMPSON
BARKER ROSHOLT & SIMPSON LLP
1010 JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701-2139
jks@idahowaters.com

For: IDAHO POWER CO
PO BOX 70
BOISE ID 83707-0070

IDAHO CONSERVATION LEAGUE
MARIE CALLAWAY KELLNER
PO BOX 844
BOISE ID 83701
mkellner@idahoconservation.org

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
FRED PRICE
1387 S VINNELL WAY
BOISE ID 83709-1657
fwprice@blm.gov

S BRYCE FARRIS
DANIEL V STEENSON
ANDREW J WALDERA
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE ID 83707
bryce@sawtoothlaw.com
dan@sawtoothlaw.com
andy@sawtoothlaw.com

For: BALLANTYNE DITCH CO LTD
170 N SIERRA VIEW WAY
EAGLE ID 83616

BOISE VALLEY IRRIGATION DITCH CO
8750 N BOGART LN
BOISE ID 83714

FARMERS COOPERATIVE DITCH CO
PO BOX 69
PARMA ID 83660

MIDDLETON MILL DITCH CO
MIDDLETON IRRIGATION ASSN INC
PO BOX 848
MIDDLETON ID 83644-0214

NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 FIRST ST S
NAMPA ID 83651

NEW DRY CREEK DITCH CO
C/O KARI ROSTI
1460 N POLLARD LN
STAR ID 83669

PIONEER DITCH CO LTD
PO BOX 70
STAR ID 83669
PIONEER IRRIGATION DISTRICT
3804 S LAKE AVE
CALDWELL ID 83605
SETTLERS IRRIGATION DISTRICT
1910 N GARDEN ST
BOISE ID 83706

SOUTH BOISE WATER CO
PO BOX 6005
BOISE ID 83707

THURMAN MILL DITCH CO LTD
10611 W TREELINE CT
BOISE ID 83713

ALBERT P BARKER
SHELLEY M DAVIS
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701-2139
apb@idahowaters.com
smd@idahowaters.com

For: BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705

RIVERSIDE IRRIGATION DISTRICT LTD
120 N THIRD ST
PO BOX 1080
PARMA ID 83660

CHRISTOPHER H MEYER
MICHAEL P LAWERENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720
chrismeyer@givenspursley.com
mpl@givenspursley.com

For: SUEZ WATER IDAHO INC
8248 W VICTORY RD
BOISE ID 83709

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
C/O GAIL MCGARRY
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

WOOD CREEK RANCH LLC
C/O JOHN FAULKNER
1989 S 1875 E
PINE ID 83355

S BAR RANCH LLC
CHRIS STEPHENS
PO BOX 1065
SUN VALLEY ID 83353

MICHAEL ORR
Michael.orr@ag.idaho.gov

Grimm, Angie

From: Scott Campbell <scott@slclexh2o.com>
Sent: Thursday, June 21, 2018 11:47 AM
To: Miller, Nick
Cc: Grimm, Angie
Subject: RE: Cat Creek Energy, LLC Application for Water Permit

Thank you, Nick.

From: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Sent: Thursday, June 21, 2018 11:41 AM
To: Scott Campbell <scott@slclexh2o.com>
Cc: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Subject: RE: Cat Creek Energy, LLC Application for Water Permit

We approved an additional three month delay in May, so I don't expect anything to happen until late August at the earliest.

From: Scott Campbell [<mailto:scott@slclexh2o.com>]
Sent: Thursday, June 21, 2018 11:23 AM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Cat Creek Energy, LLC Application for Water Permit

Hi Nick,

Just checking to see the status of publication of the above application for water permit for the South Fork Boise River. Can you give me an update of when notice will be published?

Thank you.

Scott

MEMORANDUM

TO: Application for Permit File 63-34403

FROM: Nick Miller

DATE: June 7, 2018

RE: Attorney Representation for Cat Creek Energy LLC

I received a phone call from Chris Bromley of McHugh Bromley PLLC requesting we no longer list him as the attorney for Cat Creek Energy LLC with respect to this application. I asked him to send us something to document he is no longer representing them, but he declined because he had never filed a notice of appearance with us as Cat Creek's attorney. We listed him in our database as the applicant's attorney after he amended and signed the application on their behalf. We accepted that he was their attorney at the time he signed the amendments in part because he was included by the applicant in the email correspondence between the applicant and the department, but primarily because his signature on the application amendments included the phrase, "as attorney for Cat Creek Energy, LLC".

I am removing him as attorney based on the phone conversation, but I wanted to document why he was removed and why he was listed in the first place, absent a notice of appearance.

Grimm, Angie

From: Scott Campbell <scott@slclexh2o.com>
Sent: Monday, May 21, 2018 12:34 PM
To: Grimm, Angie; Miller, Nick
Cc: budcorbus@gmail.com; Buzz Grant; Terry M. Scanlan (tscanlan@spfwater.com); sessl@elmorescounty.org; Matt McGee
Subject: RE: Cat Creek Energy LLC

Angie,

Thank you for the message. Yes, please add me to a list regarding publication of the notice on this application. Elmore County is very interested in this matter. Please also add Matt McGee to the list and Terry Scanlan.

Thank you so much for your assistance.

Best regards,

Scott

From: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Sent: Monday, May 21, 2018 8:11 AM
To: Scott Campbell <scott@slclexh2o.com>; Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: budcorbus@gmail.com; Buzz Grant <bgrant@grantlawpllc.com>; Terry M. Scanlan (tscanlan@spfwater.com) <tscanlan@spfwater.com>; sessl@elmorescounty.org; Matt McGee <MMcGee@spinkbutler.com>
Subject: RE: Cat Creek Energy LLC

Scott,

Cat Creek Energy LLC requested an additional delay of six months. IDWR granted a three month processing delay. Therefore, publication of permit application 63-34403 will not occur in June. If you, or anyone else, would like IDWR to send you a comment letter when publication will occur, we would be happy to do so. Please let me know who to send comment letters to and I will note the file.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190 phone
(208) 334-2348 fax

From: Scott Campbell [<mailto:scott@slclexh2o.com>]
Sent: Friday, May 04, 2018 12:19 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: budcorbus@gmail.com; Buzz Grant <bgrant@grantlawpllc.com>; Terry M. Scanlan (tscanlan@spfwater.com) <tscanlan@spfwater.com>; sessl@elmorescounty.org; Matt McGee <MMcGee@spinkbutler.com>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Subject: RE: Cat Creek Energy LLC

Nick,

Thank you for the response. I will check back with you during the first week of June to see if the advertisement of notice occurred.

Thank you.

Scott

From: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Sent: Thursday, May 3, 2018 7:04 PM

To: Scott Campbell <scott@slclexh2o.com>

Cc: budcorbus@gmail.com; Buzz Grant <bgrant@grantlawpllc.com>; Terry M. Scanlan (tscanlan@spfwater.com) <tscanlan@spfwater.com>; sessl@elmorecounty.org; Matt McGee <MMcGee@spinkbutler.com>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: RE: Cat Creek Energy LLC

Hi Scott,

In November 2017, the department granted a request to delay processing of this application until May 16, 2018. That date is after the deadline to submit advertisements that would run the last two weeks in May. So, while we will resume processing in May, the earliest it would be advertised is the first two weeks of June.

Nick.

From: Scott Campbell [<mailto:scott@slclexh2o.com>]

Sent: Wednesday, May 02, 2018 2:46 PM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: budcorbus@gmail.com; Buzz Grant <bgrant@grantlawpllc.com>; Terry M. Scanlan (tscanlan@spfwater.com) <tscanlan@spfwater.com>; sessl@elmorecounty.org; Matt McGee <MMcGee@spinkbutler.com>

Subject: Re: Cat Creek Energy LLC

Nick,

When will the notice be published for the Cat Creek Energy LLC application for water permit for the South Fork Boise River? Previously, you told me it would happen in May of this year.

Thank you for your response.

Scott



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 17, 2018

CAT CREEK ENERGY LLC
C/O DAVE TUTHILL
IDAHO WATER ENGINEERING
2918 N EL RANCHO PLACE
BOISE ID 83704

RE: Application for Permit 63-34403 – Processing Commencement Delay

Dear Dave:

On May 10, 2018, the Idaho Department of Water Resources ("Department") received your letter, submitted on behalf of your client, Cat Creek Energy, LLC. The letter requests the Department continue to delay processing application for permit 63-34403 for an additional six months. Your request contends the delay is consistent with IDAPA 37.03.08.040.01(d) in that it will not injure others, is not for speculative purposes, and is in the public interest as you propose to submit up to two other water right permit applications for the same project which will provide the public with a more complete understanding of the proposed water use(s).

The Department grants your request to continue to delay processing application 63-34403, but limits the additional delay to three, rather than six months. **The Department will delay processing application for permit 63-34403 until August 16, 2018.** Although you requested a six month delay, the Department believes minimizing the processing delay better serves the public interest. Since granting the first processing delay, the Department has received additional water right filings to appropriate water from the Boise River system and has received inquiries to be notified when application 63-34403 is advertised. Given the interest in your application and the potential impact the proposed appropriation may have on the Boise River system, additional, long delays are not in the public interest. Three months is an adequate time to submit the other permit applications for this project, address the challenge to the Development Agreement, and revisit the status of other applications on the Boise River system, including 63-34348. You may request processing commence before August 16, 2018 if you desire to shorten this delay. Alternatively, after the delay, the Department will contact you once processing commences. Please contact me at 208-334-2190 if you have any questions.

Regards,

Angela M. Grimm, P.G.
Water Rights Supervisor

Cc. Cat Creek Energy LLC

Grimm, Angie

From: Dave Tuthill <dave@idahowaterengineering.com>
Sent: Thursday, May 10, 2018 5:56 PM
To: Grimm, Angie
Cc: James; Hal Anderson; Douglas R. Jones
Subject: Request for Additional Delay in Processing Application for Permit
Attachments: Letter to IDWR requesting a delay in processing of CCE app 63-34403, May 10, 2018.pdf; Resolution No. 652-18 - SIGNED.PDF

Good afternoon, Angie.

I am attaching a request for additional delay in processing Application Application for Permit No. 63-34403.

I am also attaching a document referenced in the letter.

Please feel free to contact me if you have questions in this regard.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704
Office: (208) 378-1513
Cell: (208) 870-0345
Fax: (888) 538-7703
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com



2918 N. El Rancho Place, Boise ID 83704
Office: (208) 378-1513 Cell: (208) 870-0345
Fax: (888) 538-7703
www.idahowaterengineering.com
info@idahowaterengineering.com

May 10, 2018

Western Regional Office
Idaho Department of Water Resources
Attn: Ms. Angie Grimm
Sent via Email

RECEIVED
MAY 10 2018
(VIA EMAIL)
WATER RESOURCES
WESTERN REGION

RE: Request for Delay of Processing of Water Right Application 63-34403 in the name of Cat Creek Energy, LLC

Dear Angie:

On November 17, 2017, you sent a letter authorizing a one year delay in the commencement of processing of this water right application. This delay will expire on May 16, 2018.

The purpose of my letter is to suggest that processing be further delayed, in an effort to minimize confusion and optimize administrative efficiency with respect to this application. The reasons include the following:

1. The applicant has continued to diligently seek approval of other permits required for this project. Notably the Elmore County Commissioners signed a Development Agreement on February 9, 2018 (see attachment).
2. The Development Agreement approved by the Elmore County Commissioners has been challenged by a landowner not adjacent to the project site and the matter is presently under consideration by the Elmore County Commissioners. This challenge will cloud issues central to this application and it would be better to have this matter settled prior to advertising.
3. The applicant is still in the process of preparing two companion applications for the same project to identify additional uses. We understand these additional applications will have later dates of priority, but we think the project will be clearer if all associated applications are reviewed and processed at the same time.
4. Prior-in-time application for permit 63-34348 has been set for pre-hearing conference on June 4, 2018. The outcome of this application will further inform the processing of 63-34403.
5. We are not aware that any party has called for the advertising of 63-34403.
6. Further delay in advertising 63-34403 would improve the efficiency of the administrative actions of (1) IDWR, (2) any potential protestants, and (3) the applicant. We see no harm in delaying advertising for a few months. This is a large-scale privately funded project. The time will come when the application is ripe for processing. Right now it is a few months premature.

Administrative Rule 37.03.08.040.01(d) provides:

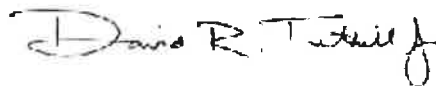
An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

Additional delay in the processing of this water right application is consistent with the provisions of this rule in that:

1. The delay has no known potential to injure others.
2. The delay is not for the purpose of speculation as evidenced by the Applicant having already secured (1) a FERC Preliminary permit, (2) approval by the US Bureau of Reclamation to proceed toward issuance of a Lease of Power Privilege, (3) five Conditional Use Permits from Elmore County for this project, and (4) the issuance of a Development Agreement by Elmore County.
3. The public interest will be better served by increasing understandability and clarity from enabling this application to be advertised simultaneously with two other applications anticipated to be filed for this project.

Based on these considerations we request a delay in processing for six additional months. We anticipate contacting you when the above issues have been ripened to the point where further processing is timely.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Tuthill, Jr.", with a stylized flourish at the end.

David R. Tuthill, Jr., Ph.D., P.E.
Consultant for the Applicant

Attachment: Resolution 625-18 Adopting a Development Agreement in Connection with the Cat Creek Energy Special Use Permits

RESOLUTION NO. 652-18

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF ELMORE COUNTY ADOPTING A DEVELOPMENT AGREEMENT IN CONECTION WITH THE CAT CREEK ENERGY, LLC CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07).

WHEREAS, Title 67, Chapter 65 of the Idaho Code ("Local Land Use Planning Act") and Article 12, Section 2 of the Idaho Constitution provide authority for Elmore County to adopt land use and regulation ordinances to protect the health, safety, and welfare of their citizens;

WHEREAS, the Board of Commissioners of Elmore County (the "Board") on February 10, 2017, conditionally approved CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07 for Cat Creek Energy, LLC (the "Applicant") pursuant to the Findings of Fact, Conclusions of Law and Order dated February 10, 2017 (the "Approval");

WHEREAS, the Approval contained certain conditions, one, Condition No. 2, of which was for the Applicant and Elmore County to enter into a recorded development agreement by November 15, 2017;

WHEREAS, on or about October 20, 2017, the Applicant requested the Board, pursuant to a public hearing with notice, to extend the amount of time it had to complete the development agreement from November 15, 2017 until May 15, 2018, as such extension was permitted in Condition No. 2 of the Approval;

WHEREAS, on December 1, 2017, the Applicant came before the Board in a public meeting to request a future hearing for approval of the development agreement, which the Board granted;

WHEREAS, on December 22, 2017, the Board, pursuant to a public hearing with notice, conducted a hearing on the development agreement, which hearing was continued until January 26, 2018; and

WHEREAS, on January 26, 2018, pursuant to a public hearing with notice, the Board continued the hearing on the development agreement and following the hearing held deliberations and takes the action described below.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY A 2-0 VOTE (HOFER RECUSAL), that the Board hereby adopts and approves the Development Agreement in the form set forth on Exhibit A (the "Development Agreement"), for that real property (the "Property") described therein, which exhibit is attached hereto and made a part hereof.

Dated this 9th day of February, 2018.



**ELMORE COUNTY BOARD OF
COMMISSIONERS**

Approving:

By: 

Franklin Corbus, Commissioner

Approving:

By: 

Wesley Wootan, Commissioner

ATTEST:



Barbara Steele, Elmore County Clerk

EXHIBIT A

[Development Agreement]

Grimm, Angie

From: Dave Tuthill <dave@idahowaterengineering.com>
Sent: Tuesday, November 21, 2017 11:00 AM
To: Grimm, Angie
Cc: Chris Bromley; Miller, Nick; James; C McHugh; Douglas R. Jones; Hal Anderson
Subject: Re: Cat Creek Energy LLC Permit Application 63-34403 Publication
Attachments: Approval of Delay in Processing.pdf

Good morning, Angie.

Thank you for the approval of the Request for Delay in Processing. By copy of this email I am sharing it with others on our team.

I look forward to working with you next year as we pursue issuance of this permit.

Have a great Thanksgiving!

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704
Office: (208) 378-1513
Cell: (208) 870-0345
Fax: (888) 538-7703
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Mon, Oct 23, 2017 at 8:56 PM, Dave Tuthill <dave@idahowaterengineering.com> wrote:
Good evening, Angie.

I have attached a letter on behalf of Cat Creek Energy, LLC, requesting a one year delay in commencement of processing for Application for Permit No. 63-34403.

Please advise if you have any questions.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704
Office: [\(208\) 378-1513](tel:(208)378-1513)
Cell: [\(208\) 870-0345](tel:(208)870-0345)
Fax: [\(888\) 538-7703](tel:(888)538-7703)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 17, 2017

CAT CREEK ENERGY LLC
C/O DAVE TUTHILL
IDAHO WATER ENGINEERING
2918 N EL RANCHO PLACE
BOISE ID 83704

COPY

RE: Application for Permit 63-34403 - Request to Delay Commencement of Processing Granted

Dear Dave:

On October 24, 2017, the Idaho Department of Water Resources (IDWR) received a letter from you submitted on behalf of your client Cat Creek Energy, LLC requesting a delay in commencement of processing the above referenced water right permit application for one year, per IDAPA 37.03.08.040.01(d). Your request contends the delay will not injure others, is not for speculative purposes, and is in the public interest as you propose to submit up to two other water right permit applications for the same project which will provide the public with a more complete understanding of the proposed water use(s).

The request to delay commencement of processing is granted. **Processing of the above referenced water right permit application will not commence until May 16, 2018**, one year after the filing was received. However, IDWR may review this delay should additional filings for the same source of water be filed between now and May 16, 2018. You may request processing commence before May 16, 2018 if you desire to shorten this delay. Alternatively, after the delay, IDWR will contact you once processing commences.

Please contact me at 208-334-2190 if you have any questions.

Regards,

Angela M. Grimm, P.G.
Water Rights Supervisor

Cc. Cat Creek Energy LLC



2918 N. El Rancho Place, Boise ID 83704
Office: (208) 378-1513 Cell: (208) 870-0345
Fax: (888) 538-7703
www.idahowaterengineering.com
info@idahowaterengineering.com

October 23, 2017

Western Regional Office
Idaho Department of Water Resources
Attn: Ms. Angie Grimm

RECEIVED
OCT 24 2017
VIA EMAIL
WATER RESOURCES
WESTERN REGION

RE: Request for Delay of Processing of Water Right Application 63-34403 in the name of Cat Creek Energy, LLC

Dear Angie:

In accordance with our email exchange in this matter, this letter serves as a formal request for IDWR to delay commencement of processing of Water Right Application No. 63-34403 for one year. The applicant reserves the opportunity to request a discontinuation of the delay if conditions change within the one year period.

Administrative Rule 37.03.08.040.01(d) provides:

An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

A delay in the processing of this water right application is consistent with the provisions of this rule in that:

1. The delay has no known potential to injure others.
2. The delay is not for the purpose of speculation as evidenced by the Applicant having already secured (1) a FERC Preliminary permit, (2) approval by the US Bureau of Reclamation to proceed toward issuance of a Lease of Power Privilege, and (3) five Conditional Use Permits from Elmore County for this project.
3. The public interest will be better served by increasing understandability and clarity from enabling this application to be advertised simultaneously with two other applications anticipated to be filed for this project.

Please advise if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "David R. Tuthill, Jr.", is written over a faint, larger version of the same signature.

David R. Tuthill, Jr., Ph.D., P.E.
Consultant for the Applicant

Grimm, Angie

From: Grimm, Angie
Sent: Tuesday, October 10, 2017 10:25 AM
To: 'Dave Tuthill'
Cc: Chris Bromley; Miller, Nick; James
Subject: RE: Cat Creek Energy LLC Permit Application 63-34403 Publication

Dave,

Good morning! Thank you for your response. By rule, the Department is required to evaluate whether the request to delay commencement of processing for up to one(1) year or interrupt processing for up to six (6) months; will injure others, is for speculative purposes, or is not in the public interest. In order to evaluate these criteria, would you please submit the written request (in letter format preferably) to delay commencement of processing for up to one (1) year with an explanation or reason for the request? With the reason for the request, the Department can evaluate the required criteria before determining if the request should be granted. Please submit this written request by October 24, 2017. Otherwise, the Department will proceed with publication of the application the first two weeks in November. Thank you for your attention to this matter. I look forward to your response.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190 phone
(208) 334-2348 fax

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]
Sent: Tuesday, October 10, 2017 9:19 AM
To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Chris Bromley <cbromley@mchughbromley.com>; Miller, Nick <Nick.Miller@idwr.idaho.gov>; James <jtc@ccewsrps.net>
Subject: Re: Cat Creek Energy LLC Permit Application 63-34403 Publication

Good morning, Angie, and thank you for the helpfully explanatory email.

The purpose of this response is to request on behalf of Cat Creek Energy, LLC, a delay in the processing of this application for a period of up to one year.

Is this email sufficient documentation, or is a letter required?

Thanks, Dave

On Oct 3, 2017 4:22 PM, "Grimm, Angie" <Angie.Grimm@idwr.idaho.gov> wrote:

Dave & Chris,

Good afternoon! I've been assigned the task of processing application for water right permit no. 63-34403 in the name of Cat Creek Energy LLC. I've reviewed email correspondence Dave had with Nick Miller in late spring/early summer when the application was filed. An initial email from Dave (dated May 17, 2017) requests IDWR wait to publish the legal notice for this permit application until the "Rule 40 information" is assembled and advertising is requested (by the applicant/representatives). IDWR Western Region's current practice is to publish the legal notice of a water right permit application once it is determined the application is a complete filing, prior to Rule 40 (IDAPA 37.03.08.040.05) information request(s). I've reviewed/prepared the application for publication, which I anticipate will occur the last two weeks of October. There is no expectation any additional information will be required prior to publication. If the applicant wishes to delay publication of the application, we request the applicant/representative submit a written request to delay processing for a period not to exceed one (1) year or interrupt processing for a period not to exceed six (6) months per IDAPA 37.03.08.040.01.d. If IDWR does not receive a written request to delay or interrupt processing by October 10, 2017, publication of the application will proceed. Please let me know if you have any questions or wish to discuss the matter further.

Regards,

Angie

Angela M. Grimm, P.G.

Water Rights Supervisor

IDWR - Western Region

[2735 Airport Way](#)

[Boise, ID 83705-5082](#)

[\(208\) 334-2190](#) phone

[\(208\) 334-2348](#) fax

Grimm, Angie

From: Grimm, Angie
Sent: Tuesday, October 03, 2017 4:22 PM
To: 'Dave Tuthill'; cbromley@mchughbromley.com
Cc: Miller, Nick
Subject: Cat Creek Energy LLC Permit Application 63-34403 Publication

Dave & Chris,

Good afternoon! I've been assigned the task of processing application for water right permit no. 63-34403 in the name of Cat Creek Energy LLC. I've reviewed email correspondence Dave had with Nick Miller in late spring/early summer when the application was filed. An initial email from Dave (dated May 17, 2017) requests IDWR wait to publish the legal notice for this permit application until the "Rule 40 information" is assembled and advertising is requested (by the applicant/representatives). IDWR Western Region's current practice is to publish the legal notice of a water right permit application once it is determined the application is a complete filing, prior to Rule 40 (IDAPA 37.03.08.040.05) information request(s). I've reviewed/prepared the application for publication, which I anticipate will occur the last two weeks of October. There is no expectation any additional information will be required prior to publication. If the applicant wishes to delay publication of the application, we request the applicant/representative submit a written request to delay processing for a period not to exceed one (1) year or interrupt processing for a period not to exceed six (6) months per IDAPA 37.03.08.040.01.d. If IDWR does not receive a written request to delay or interrupt processing by October 10, 2017, publication of the application will proceed. Please let me know if you have any questions or wish to discuss the matter further.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190 phone
(208) 334-2348 fax

Miller, Nick

From: Miller, Nick
Sent: Tuesday, June 06, 2017 12:16 PM
To: 'Dave Tuthill'
Cc: James Carkulis; Hal Anderson; Chris Bromley; C McHugh; Douglas R. Jones; Gordon Brittan; Roger Rosentreter
Subject: RE: FW: Water Right Application for Cat Creek Energy, LLC

Dave,

Chris Bromley came in and addressed the application. We have accepted it for filing. It has been assigned a priority date of 5/16/2017 and number 63-34403.

Once it is assigned to an agent, they will contact you to discuss options for advertising and additional information submittal.

Let me know if you have further questions in the meantime.

Nick.

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]
Sent: Thursday, June 01, 2017 10:47 AM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Hal Anderson <hal@idahowaterengineering.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>; Douglas R. Jones <drjonestwf@msn.com>; Gordon Brittan <gbrittan@exergydevelopment.com>; Roger Rosentreter <roger.rosentreter0@gmail.com>
Subject: Re: FW: Water Right Application for Cat Creek Energy, LLC

Nick,

James Carkulis is authorized to sign but he is in Montana. Can he do this electronically?

Alternatively, he is willing to authorize me and I can stop by and do it.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704
Office: (208) 378-1513
Cell: (208) 870-0345
Fax: (888) 538-7703
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Thu, Jun 1, 2017 at 8:48 AM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Dave,

If John is available, it would be best for him to come in, but any authorized representative of the corporation (attorney, board member, or employee) can do it as well.

Nick.

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]

Sent: Thursday, June 01, 2017 7:37 AM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Hal Anderson <hal@idahowaterengineering.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>; Douglas R. Jones <drjonestwf@msn.com>; Gordon Brittan <gbrittan@exergydevelopment.com>; Roger Rosentreter <roger.rosentreter0@gmail.com>

Subject: Re: FW: Water Right Application for Cat Creek Energy, LLC

Nick,

Given your interpretation we choose to delete flood protection from the application and maintain our original date of priority.

In the past a line through the item that is initialed by a responsible party has been sufficient. What is the best way for us to proceed given we do not want you to return the application to us for changes. We are willing to stop by the Western Regional Office -- does it need to be John Faulkner or can another from our team initial this deletion?

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:(208)378-1513)
Cell: [\(208\) 870-0345](tel:(208)870-0345)
Fax: [\(888\) 538-7703](tel:(888)538-7703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Tue, May 30, 2017 at 9:15 AM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Dave,

I will give the application a priority date of May 16, 2017 if the Flood Protection use is deleted. I would advance the priority date to the date of the amendments describing a place of use for Flood Protection if you decide to go that route.

If it makes a difference to you and your client, the Department has received one other application that potentially competes with Cat Creek's. It is also a May 16, 2017 application and it is for 23.5 cfs from the Boise River, downstream of Star Bridge near Sand Hollow Creek for Wildlife uses.

Let me know if you have further questions,

Nick.

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]

Sent: Tuesday, May 30, 2017 7:52 AM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Hal Anderson <hal@idahowaterengineering.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>; Douglas R. Jones <drjonestwf@msn.com>; Gordon Brittan <gbrittan@exergydevelopment.com>; Roger Rosentreter <roger.rosentreter0@gmail.com>

Subject: Re: FW: Water Right Application for Cat Creek Energy, LLC

Nick,

After further reflection and consideration we have determined that maintaining the original date of priority for this application is paramount.

If we can submit an amended application and clarify that the place of use for flood protection/control is the same as for the power uses and maintain our date of priority we will do so. If this would result in a delayed date of priority we prefer to just scratch the flood protection use shown on the application. If need be we can ask John Faulkner to stop by the region and initial this deletion when he is in Boise.

What flexibility do we have while maintaining the original date of priority of filing?

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:2083781513)
Cell: [\(208\) 870-0345](tel:2088700345)
Fax: [\(888\) 538-7703](tel:8885387703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Mon, May 29, 2017 at 6:43 PM, Dave Tuthill <dave@idahowaterengineering.com> wrote:

Good evening, Nick, and thanks for the input.

I will be going to Eastern Idaho on Wednesday and returning on Thursday, so I will attempt to stop by Gooding and obtain John Faulkner's signature on an amended application incorporating your suggestions.

In the meantime, please retain the original application. As you are aware, we have been discussing how to better describe the flood protection/flood control benefits of the project, but this in no way impacts the primary reason the application was filed -- hydropower and its related uses.

On the slight chance a competing application might be filed this week please hold the original application. If there is a competing filing this week we can merely drop the flood protection/flood control aspects and retain the original date of priority. I will plan to come into the Western Regional Office on Friday morning with an amended document and we can discuss the date of priority at that time relative to any potentially intervening applications.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:(208)378-1513)
Cell: [\(208\) 870-0345](tel:(208)870-0345)
Fax: [\(888\) 538-7703](tel:(888)538-7703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Thu, May 25, 2017 at 8:21 AM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

We should have something initialed or signed by Mr. Faulkner or another person authorized by Cat Creek Energy LLC. Ideally, we would get either a new application or amendments on the original application form, with an original signature. I've attached a scanned image of the application that you could print and have Mr. Falkner (or another representative of the LLC) initial and date the changes. I would accept a high quality, scanned version of the amended application emailed to me.

Also, it looks like this application was submitted on an older version of our form. We have updated the form to provide a place for information clarifying the role and address of the representative/consultant. I've attached a copy for your use in future filings, or if you choose to submit a new application form for Cat Creek.

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]
Sent: Thursday, May 25, 2017 7:39 AM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>; Hal Anderson <hal@idahowaterengineering.com>; Douglas R. Jones <drjonestwf@msn.com>
Subject: Re: FW: Water Right Application for Cat Creek Energy, LLC

Good morning, Nick.

Please do not return the application. We will submit amending language. What are your requirements for signature on this submittal?

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:(208)378-1513)
Cell: [\(208\) 870-0345](tel:(208)870-0345)
Fax: [\(888\) 538-7703](tel:(888)538-7703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Wed, May 24, 2017 at 4:43 PM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Dave,

I should have included a question to you in my last message about whether you would be submitting an amended application or if I should return this one to you or the applicant for correction, or how you would prefer to handle changing the application?

Nick

From: Miller, Nick

Sent: Wednesday, May 24, 2017 4:36 PM

To: 'Dave Tuthill' <dave@idahowaterengineering.com>

Subject: RE: Water Right Application for Cat Creek Energy, LLC

Dave,

I think adding the language you propose to the application ("The place of use for flood protection is identical to the place of use of power storage") would make it acceptable for filing. At this point, that is the goal and we can hash out other clarifications as needed. We just need a complete application to establish a priority date. Without a description of the place of use for Flood Protection, the application is incomplete. A description of the place of use is a basic requirement for any water right application regardless of the nature of use. Your example of "diversion to storage" isn't really comparable since that use is always associated with a "Storage" use and that use will have a place of use to describe where water can be stored. With Flood Protection, there is nothing in the application telling us where you intend to accomplish the beneficial use. You must provide something, either a PLS description or a statement on the application that tells us that "PS" denotes the place of use for Power Storage, Power from Storage, and Flood Protection.

As far as the nomenclature of "flood control" vs "flood protection", that is something we can clarify later.

Once we get either a POU description on the application or have the Flood Protection use removed, we can accept it for filing.

Sorry to be a stickler on this. It seems like a small thing, but I hope you agree that it is better for your client to fully comply with the rules rather than risk having someone point out further down the road that the application wasn't complete and potentially derail the process.

Nick,

From: Dave Tuthill [<mailto:dave@idahowaterengineering.com>]

Sent: Wednesday, May 24, 2017 8:57 AM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Hal Anderson <hal@idahowaterengineering.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>; Douglas R. Jones <drjonestwf@msn.com>; Gordon Brittan <gbrittan@exergydevelopment.com>; Roger Rosentreter <roger.rosentreter0@gmail.com>

Subject: Re: Water Right Application for Cat Creek Energy, LLC

Nick,

As another thought, Chris contributed that IDWR has already issued two water rights for flood control storage: 96-9284 and 96-9285. They're quite small, but the legal concept of flood control storage has been licensed previously, so that purpose shouldn't pose a problem from the standpoint of acceptance of an application.

One of my concerns is that we cannot really control floods -- but we can protect from them. The "Flood Control District" law in Idaho has long been known to be a misnomer. Here is a chance to partially correct that misconception by coding in "Flood Protection" instead of "Flood Control." As you know, there is no rule or statute that defines or limits the water use terminology codes adopted by IDWR.

Here is a proposal to maintain this use and perhaps satisfy your concerns. As a clarification to the application (in no way an expansion to what was originally filed), how about adding the following statement:

"The place of use for flood protection is identical to the place of use of power storage. The applicant will accept a change in the nomenclature of this use from "Flood Protection" to "Flood Control" if preferred by IDWR."

Might this work?

By the way -- not all water uses on water rights have associated places of use. Take for example the use "Diversion to Storage" use which is deemed a legitimate use without an associated place of use. A water

right including "Diversion to Storage" always includes other clarifying elements. This is similar to how I look at "Flood Protection" as an additional use on this application.

As we continue to work this out, please do not return the application. These are minor elements relative to the purpose of the project and the application, and we are prepared to drop the flood protection aspect if needed to save the rest of the application. This would be unfortunate as flood protection is a very beneficial aspect of this project. This year for example the Treasure Valley might wish at some point there were pumps upstream capable of diverting 9,996 cfs out of the river.

Thank you for coordinating this application with the State Office as it is large enough and unusual enough that perhaps some statewide decisions need to be made about how to proceed.

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:2083781513)
Cell: [\(208\) 870-0345](tel:2088700345)
Fax: [\(888\) 538-7703](tel:8885387703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Tue, May 23, 2017 at 3:51 PM, Dave Tuthill <dave@idahowaterengineering.com> wrote:

Hi, Nick.

James had an additional thought which is the undercurrent of my email to you but can be expressed in this concise way:

We filed for power. Flood protection is incidental.

We certainly don't want to disturb in any way the power uses -- the flood protection use designates an incidental (and potentially helpful) attribute of the project but the use can easily be eliminated from the filing.

Please advise if the flood protection line should just be deleted so you are ok with the application.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:2083781513)
Cell: [\(208\) 870-0345](tel:2088700345)
Fax: [\(888\) 538-7703](tel:8885387703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Tue, May 23, 2017 at 3:09 PM, Dave Tuthill <dave@idahowaterengineering.com> wrote:

Hi, Nick and thanks for the email.

Is it a beneficial use to divert water at certain times for flood protection? I argue that it is -- and this project can provide that beneficial use by diverting at certain times. Such diversions have been encouraged by IDWR at times -- this merely codifies the practice as an intended beneficial use.

One of the beneficial uses on the IDWR existing list is "Flood Control Storage." I think that flood protection as a diversion is just as valid a use. The list of beneficial uses developed by IDWR over the years is not (to my knowledge) defined as complete and exhaustive. Various uses have been added over the years (heating, cooling, ground water recharge, etc.).

I would recommend not returning the application. As you know the Director can approve water rights in part, and the power uses on this application are certainly valid and worthy of retaining the validity of the application. If after talking with others at IDWR you decide that the flood protection use should be characterized in some other way please advise and we can submit an amended application accordingly.

Regarding access to the point of diversion, we are engaged with the Bureau of Reclamation in a formal Lease of Power Privilege process which is intended to result in access to the water over federal land .

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:2083781513)
Cell: [\(208\) 870-0345](tel:2088700345)
Fax: [\(888\) 538-7703](tel:8885387703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

On Tue, May 23, 2017 at 12:05 PM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Hi Dave,

Sorry for not getting back to you sooner. We had the Regional Manager's meeting last week so I am a bit behind. I have looked the application over and I wanted to let you know that I may not be able to accept it for filing and I may be returning it. Since that determination would affect the priority date of the application, I want to get that sorted out as quickly as possible to give you the most time to correct it and get it back to us if it turns out to be necessary. The issue I see is with the "Flood Protection" use. I do not see information on the application regarding the place of use for that beneficial use. Also, I don't see that we have any other rights for that use so I am struggling a bit with whether we would need more to describe the proposed use. So, if I return the application it would be because the application does not "set[s] forth all the facts necessary to show the location, nature, and amount of the proposed use" – See 42-204. I plan to meet with folks today to get some advice and I'll let you know what we determine. If it turns out we can't accept it for filing and if you are concerned about the priority date of the filing, you could just remove the Flood protection use from the

application and we can accept it for just the power purposes with a May 16, 2017 priority date. I'm hopeful we can get some clarification and get it accepted in some form without too much delay.

Also, I wanted to bring up the question of whether the applicant has obtained or has begun to obtain possessory interest in the point of diversion and conveyance to the new reservoir. This isn't necessary for us to accept the application for filing, but if it comes out during the review or a protest that the applicant didn't have it at the time of filing, they could be risking a finding that the application wasn't made in good faith or was speculative, so keep that in mind. It sounds like you have begun the process based on what you write below, but I didn't see anything on the application, so I thought I'd bring it up.

I'll get back to you hopefully later today as to whether I'll be returning the application.

Nick.

From: Dave Tuthill [mailto:dave@idahowaterengineering.com]

Sent: Wednesday, May 17, 2017 3:36 PM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: James Carkulis <jcarkulis@exergydevelopment.com>; Gordon Brittan <gbrittan@exergydevelopment.com>; Hal Anderson <hal@idahowaterengineering.com>; Douglas R. Jones <drjonestwf@msn.com>; Roger Rosentreter <roger.rosentreter0@gmail.com>; Chris Bromley <cbromley@mchughbromley.com>; C McHugh <cmchugh@mchughbromley.com>

Subject: Water Right Application for Cat Creek Energy, LLC

Good afternoon, Nick. I hope you are surviving the spring challenges at IDWR.

I am writing about the application for permit for Cat Creek Energy, LLC that was filed yesterday at the State Office.

This is the application that we discussed with you and Jeff Peppersack last year. The project has matured in the following ways since we last discussed it:

- Preliminary Permit has been issued by FERC.
- Bureau of Reclamation Lease of Power Privilege process has been initiated.
- Elmore County has issued all five Conditional Use Permits requested for this project.

- Contributing Funding Agreement has been signed by BoR and CCE to enable BoR to work on this project.
- NEPA studies will soon begin.

When you receive the application in your regional office (it might already be there), please note on item 11, narrative description of the proposal, that I have annotated "submitted via email." In response to this item I am attaching a flyer that explains the project, incorporating both a narrative and other pertinent information.

I recognize that with an application of this size your office typically requires the submittal of Rule 40 information prior to advertising. Please consider this email to be a request to not advertise the application until we assemble the Rule 40 information and request advertising.

Please contact me if any questions result from the review of the application. Also, please advise of the number that is assigned to the application.

Thanks,

Dave

David R. Tuthill, Jr., Ph.D., P.E.
Idaho Water Engineering, LLC
2918 N. El Rancho Pl., Boise, ID 83704

Office: [\(208\) 378-1513](tel:2083781513)
Cell: [\(208\) 870-0345](tel:2088700345)
Fax: [\(888\) 538-7703](tel:8885387703)
email: dave@idahowaterengineering.com
website: www.idahowaterengineering.com

